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August 1, 2025

Sent via upload to: <https://ecology.commentinput.com/?id=bS4tQR6WV>

Mr. Adam Saul
CFS Rule Lead
Washington State Department of Ecology
300 Desmond Drive SE
Lacey, WA 98503

Re: WSPA Comments on Draft 2025 Chapter 173.424 WAC Amendments

Dear Mr. Saul,

Western States Petroleum Association (WSPA) appreciates the opportunity to provide comments on the Washington State Department of Ecology (Ecology) draft 2025 amendments to Chapter 173-424 – WAC Clean Fuels Program Rule. WSPA is a trade association representing companies that supply a broad range of transportation energy sources across the Western United States, including Washington. These energy sources include petroleum, liquid fuels, natural gas, and other essential energy supplies, as well as their transportation and marketing.

Outlined below are WSPA's specific comments on the draft rule language, organized by section. WSPA respectfully requests that these comments be considered in conjunction with those submitted in the attached comment letters, which are hereby incorporated by reference.

Comments By Section

WAC 173-424-110(9) Definitions - "Alternative Marine Fuel" & WAC 173-424-120(3) Opt-in fuel. WSPA supports Ecology's proposal to allow credit generation for alternative marine fuels used within Washington waters under WAC 173-424-110(9) and WAC 173-424-120(3).

To enable this WSPA recommends Ecology to develop a carbon intensity (CI) value for petroleum based Marine fuel. As the draft language indicates, benchmarking the combustion of Marine fuels against the combustion of on-road diesel may not be accurate given the fuel type/duty cycle of marine vehicles. If Ecology proceeds, we recommend it establish a CI value specific to marine fuels by developing an appropriate marine baseline pathway. Without valid and clearly defined pathways, the opt-in mechanism risks becoming ineffective. An energy economy ratio (EER) could also be developed to account for any differences in emissions from the use of a petroleum marine fuel vs an alternative fuel in a marine vessel.

WAC 173-424-110(113) Definitions - "Operating Condition". Ecology should update the definition of "*Operating Condition*" to clarify that such a condition may be established by CARB, the Oregon Department of Environmental Quality (DEQ), Ecology, or other appropriate regulatory agencies.

WAC 173-424-110(154) Definitions - "Total obligated amount (TOA)". WSPA requests clarification from Ecology on the transaction type "purchased below the rack for export" in the TOA definition.

For parties that purchase fuel below the rack and later export it, Ecology should clarify whether they are required to net out the export credit via a separate transaction once the fuel has been exported.

If this is the intent, Ecology should ensure consistency by including “purchased below the rack for export” as a defined transaction type within the regulation. If this is not Ecology’s intent, we recommend Ecology remove references to the “purchased below the rack for export” transaction from the TOA definition to avoid confusion.

WAC 173-424-120(4)(d) - Applicability. Ecology should neither set a minimum renewable content requirement for hydrogen fuel nor prohibit hydrogen produced from fossil gas. Instead, hydrogen should be evaluated based on its carbon intensity, just like all other fuels under the Clean Fuels Standard (CFS). For example, hydrogen produced from natural gas with carbon capture and sequestration could potentially have a CI score below the standard and be eligible to generate credits. Why would Ecology arbitrarily exclude low-carbon options from the CFS?

WAC 173-424-200(2)(b)(i)(A)(IV) - Designation of fuel reporting entities for liquid fuels. This subsection states that “Transfer of credit or deficit generator status is not the result of a regulated party above the rack transferring ownership of liquid fuel to a downstream entity below the rack unless the fuel is destined for export. The downstream entity is required to report on WFRS, if it exports the fuel.” This appears to indicate that regulated parties above the rack may transfer credit or deficit generator status to a downstream entity below the rack, provided the downstream entity intends to export the fuel.

However, WAC 173-424-110(157) defines a “position holder sale for export” as the relevant transaction type for any fuel sold below the rack to an entity who exported the fuel. This transaction type is included in WAC 173-424-110(154) as one that affects the position holder’s (the regulated party above the rack) credit/deficit obligation. These two sections appear to conflict regarding which entity holds the credit or deficit generator status for exported fuel. To resolve this ambiguity, WSPA recommends that Ecology clarify the regulation by requiring the use of the “position holder sale for export” transaction type only when the above-the-rack entity intends to transfer the credit or deficit obligation to the below-the-rack entity. If the above-the-rack entity does not intend to transfer the obligation, the transaction type “position holder sale without obligation” could be used instead.

In all cases, Ecology should maintain the requirement that entities exporting fuel below the rack report in WFRS and retire credits or deficits as appropriate. The obligation to retire credits or deficits should not fall on the above-the-rack entity when the exporting party is a separate entity. This recommendation is supported by the revisions in WAC 173-424-200(2)(b)(iv), which shift the reporting responsibility for fuel sold across the rack for export from the above-the-rack entity to the entity holding title as the fuel crosses the border.

WAC 173-424-300(1)(g)(vi) - Registration. It is entirely foreseeable that a registered party may experience four consecutive quarters of inactivity in the Washington CFS program, particularly given the fluctuations in the program’s credit prices and other market dynamics. WSPA recommends that registered parties notified of potential account deactivation be granted the opportunity to request continued account activation if they intend to resume participation in the Washington market in the future. This would enable them to retain possession of their existing credits. Without such an option, the deactivation of accounts under these circumstances could constitute a regulatory taking, potentially in violation of the Fifth Amendment to the U.S. Constitution.

WAC 173-424-420(6)(a)(ii) - Specific Reporting Requirements. WSPA requests the elimination of the requirement to report MCON. Not all gasoline and diesel fuels supplied in Washington originate from in-state refineries; therefore, mandating MCON reporting imposes an inequitable burden on Washington refineries and yields no discernible benefit to the CFS.

WAC 173-424-420(6)(d) - Specific Reporting Requirements. Transactions in the WFRS are not linked to a specific physical tank or location. Therefore, this section should be removed, as FPCs are reported at the state level rather than by individual tank or physical location.

WAC 173-424-420(10) - Specific Reporting Requirements. WSPA recommends revising this section to ensure that corrections made in the WFRS apply to both deficits and credits, including instances where credits are added or deficits removed. Making adjustments in only one direction creates an imbalance that compromises the accuracy and fairness of the system. In the absence of a clear justification for this asymmetry, the current approach risks undermining the integrity of the reporting framework. Consistently applying corrections in both directions would better support transparency and equitable administration.

WAC 173-424-560(1)(a)(ii)(A) - Generating and Calculating Capacity Credits for ZEV Fueling Infrastructure Pathways. Hydrogen fueling station operators should have the authority to require training for individuals who fuel at their sites, as this represents a sound and responsible safety practice. The risk and potential consequences of an accident caused by improper fueling by an untrained individual are significant, particularly when such incidents could be avoided through appropriate training. Allowing operators to mandate training helps ensure safe operation and reduces the likelihood of preventable incidents.

WAC 173-424-560(2)(a)(ii)(A) - Generating and Calculating Capacity Credits for ZEV Fueling Infrastructure Pathways. Station operators should be permitted to require training for individuals who fuel at their sites, as this represents a prudent and effective safety practice. The potential risk and consequences of an accident resulting from improper fueling by an untrained individual are substantial, especially when such incidents could be prevented through proper training. Allowing operators to implement training requirements would enhance operational safety and reduce the likelihood of avoidable incidents.

WAC 173-424-600(6)(g) - Specified Source Feedstocks and Carbon Intensities. WSPA supports Ecology's efforts to ensure the environmental integrity of specified source feedstocks, but recommends refinements to improve program clarity, efficiency, and consistency with commercial practices.

First, we request that Ecology explicitly allow for the commingling of renewable feedstocks on the same vessel. This common industry practice improves logistical efficiency and reduces emissions by avoiding unnecessary shipments. Commingling should be permitted where proper documentation and attestation are maintained.

Second, WSPA recommends that Ecology affirm that routine operations such as cleanup and drying are considered standard fuel pathway activities and may be accounted for using default emission factors from the GREET model. Including this in the regulation and attestation language will support implementation.

Third, WSPA recommends that Ecology reconsider the point-of-origin requirement for used cooking oil (UCO). In many cases, supply chains involve intermediaries who treat their sourcing information as proprietary. Requiring attestations back to the original point of collection would introduce significant administrative burdens without materially improving program integrity. We encourage Ecology to adopt an approach that allows for traceability through certified documentation or third-party verification systems that ensure accountability while protecting commercially sensitive data.

WAC 173-424-600(7) - Carbon Intensities. WSPA recommends that renewable naphtha and renewable propane be explicitly included in this section alongside alternative jet fuel and renewable diesel, as they are co-products of the same production processes at renewable diesel and alternative jet fuel facilities. This section should also apply to renewable fuel facilities located outside of Washington State and allow for the consumption of biomethane outside the state. Renewable diesel, alternative jet fuel, and co-products such as renewable naphtha and renewable propane should be treated consistently with respect to biomethane usage, provided all products originate from the same facility.

WAC 173-424-600(7)(b)(ii) - Book-and-claim accounting for pipeline-injected biomethane. Ecology's proposed rule imposes deliverability requirements on all RNG (renewable natural gas) facilities, regardless of when they became operational. This retroactive application penalizes early adopters who made significant investments under prior regulatory assumptions. WSPA recommends that no deliverability requirements be imposed on RNG facilities that began operation before December 31, 2029. If deliverability requirements are retained, they should be applied prospectively only to facilities that start injection after that date. This approach aligns with California's Low Carbon Fuel Standard (LCFS), promotes regulatory certainty, and ensures fairness for first movers while still allowing for deliverability standards on future projects.

WAC 173-424-600(7)(C)(d)(i) and (ii) - Book-and-claim accounting for pipeline-injected biomethane. WSPA is concerned that these sections require submission of unredacted contracts as part of the book-and-claim accounting process. These contracts often include confidential business information such as pricing, volumes, and proprietary terms. While we support Ecology's objective of verifying that biomethane contracts are properly established between the producer, marketer, and dispenser, mandating fully unredacted documents could expose sensitive commercial data. To ensure transparency while protecting business confidentiality, we recommend allowing redaction of commercially sensitive terms, along with a legally binding certification that full contracts are available for confidential review by Ecology under appropriate safeguards.

WAC 173-424-600(9) - Carbon intensities review and approval process. WSPA is concerned that WAC 173-424-600(9) significantly expands Ecology's review scope, despite the addition of third-party verification requirements. Third-party verification is intended to ensure thorough yet efficient review, particularly given limited agency resources. While WSPA acknowledges Ecology's authority to review applications, extending that authority to "any aspects of the pathway that affect the carbon intensity value" creates redundancy and may further delay an already slow process compared to other low carbon fuel programs. WSPA recommends refining this section to avoid duplication and improve review timelines..

WAC 173-424-600(9)(b)(iv) - Carbon intensities posting applications for public comment. WSPA requests that Ecology specify which documents from a fuel pathway application will be posted for public comment and exclude the Tier 1 calculator, as it contains proprietary business information. While WAC 173-424-600(9)(b)(iv)(A) states that Ecology will work with applicants to aggregate and summarize data, WSPA recommends allowing applicants to submit redacted versions of documents. Aggregation alone may not sufficiently protect trade secrets, and applicant-controlled redaction aligns with practices in other low carbon fuel programs.

WAC 173-424-610(9)(I) - Obtaining a Carbon Intensity. WSPA requests that Ecology not apply a four-times penalty when the operational CI exceeds the certified CI. Instead, credits should be reconciled based on the actual operational CI. Because process efficiencies and transportation distances can vary from year to year, some fluctuation in CI values is expected. Penalizing renewable fuel producers for these variations, particularly when they are beyond the producer's

control, is unnecessarily punitive and may discourage participation in the program. A more balanced approach that accounts for operational realities would better support program goals while maintaining fairness.

WAC 173-424-610(9)(m) - Obtaining a Carbon Intensity. WSPA requests that the word “may” be changed to “shall” in the provision titled “Credit true-up after annual verification.” The current language— “Ecology may perform credit true-up...”—creates uncertainty around the treatment of verified CI improvements. To provide regulatory consistency and ensure that fuel providers are appropriately credited for achieving lower operational CIs, we recommend revising the language to read: “Beginning with the 2025 annual fuel pathway report data reporting year, Ecology shall perform credit true-up...” This change will align the rule’s implementation with its intent to support accurate CI accounting and reward ongoing emissions reductions, even in cases involving temporary pathways, while maintaining the integrity of WAC 173-424-430(4)’s prohibition on retroactive credit generation.

WAC 173-424-610(16)(c)(i) – Avoided Methane Crediting. WSPA is concerned that the limited time frame for avoided methane crediting disadvantages early adopters who incurred higher capital costs. We request that facilities operational prior to 2028 be granted 20 years of eligibility for avoided methane crediting. This change would help ensure equitable treatment for first movers and continued support for investments that deliver meaningful methane reductions.

WAC 173-424-700(3) - Authority to Suspend, Revoke, or Modify. WSPA continues to believe that multiplying credit and deficit adjustments is likely to have an excessively punitive effect on reporting entities and could exacerbate market disruptions. The high multipliers proposed may offset or even exceed any reduction in the total quantity of credit/deficit adjustments that might be achieved by decreasing the number of occurrences. If a credit or deficit correction is needed, Ecology should apply the correction with no “multiplier” penalty, unless the regulated entity is found to have intentionally manipulated the data to lower its deficit obligation or increase its credit generation.

WAC 173-424-810(1) - General Requirements for Verification of Reports and Fuel Pathway Applications. WSPA requests that Ecology revise the proposed start date for annual third-party verification. As currently written, the regulation would require third-party verification beginning in 2027 for fuel pathway reports covering data from 2025 and 2026. However, data from 2025 would have been collected prior to the adoption of this amended regulation. To ensure consistency and fairness, Ecology should clarify that third-party verification requirements will not apply until 2028, covering fuel pathway reports for calendar years 2026 and 2027. This adjustment aligns the verification requirement with the effective regulatory period and avoids retroactive application.

WAC 173-424-810(4)(c)(ii) - General Requirements for Verification of Reports and Fuel Pathway Applications. The proposed language sets a threshold of 25% greater emissions than prior year. This metric is not adequate to the CFS, because the CFS does not report an emission number, but credits and deficits. WSPA requests that Ecology uses a different metric, perhaps a percentage of credits or deficits.

WAC 173-424-820(1) and (2) - Requirements for Verification of CFS Reports and Validation of Fuel Pathway Applications. WSPA recommends that Ecology clearly state that fuel pathways validated or verified under the California LCFS or Oregon CFP programs do not require separate validation or verification under Washington’s program. Recognizing existing approvals from comparable programs will reduce redundancy and administrative burden while maintaining environmental integrity. Additionally, as noted in WSPA’s comments on WAC 173-424-810, fuel pathway verification should not begin before 2028, since data from earlier years predates the

adoption of the amended regulation. Accordingly, WSPA urges Ecology to revise subsection (2)(b)(i) to reflect this timing.

WAC 173-424-820(1)(b) - Requirements for Verification of CFS Reports and Validation of Fuel Pathway Applications. The validation schedule in this subsection states that fuel pathway applicants must submit the validation statement concurrently with the fuel pathway application. However, WAC 173-424-600(10)(c) indicates that Ecology will release a Tier 2 application for validation only after it has been reviewed for completeness. WSPA recommends that Ecology clarify the timing and process for validation for different application types to ensure consistency and avoid confusion among applicants. Clear guidance will help streamline the application process and promote regulatory transparency.

WAC 173-424-820(4) - Requirements for Verification of CFS Reports and Validation of Fuel Pathway Applications. WSPA recommends that this subsection be removed, as MCON reports should not be required, consistent with WSPA's comment on WAC 173-424-420(6)(a)(ii). Crude oil reports limited to Washington State refineries do not accurately reflect the full range of crude oils used in producing gasoline and diesel fuel supplied within the state. This is due to the significant volume of fuel imported from other states and countries. Requiring MCON reports under these circumstances would not yield a representative or comprehensive dataset and could impose unnecessary administrative burdens.

WAC 173-424-850(3) - Conflict of Interest Requirements. WSPA recommends that Ecology clarify that engaging a third-party verifier for services under the Washington CFS program does not, in itself, constitute a conflict of interest if that same verifier is also engaged for verification services in other programs or jurisdictions. This includes, but is not limited to, Washington's GHG reporting program, California's GHG and LCFS programs, and Oregon's DEQ GHG and CFP programs. Verifiers routinely operate across multiple regulatory frameworks, and participation in multiple programs should not be considered a conflict unless specific, direct risks to impartiality are identified. Clear guidance on this point will help maintain verifier availability and continuity across jurisdictions.

WAC 173-424-900 - Tables 1 and 2 (CI Standards). WSPA requests that Ecology update the CI standards in Tables 1 and 2 to align with House Bill 1409 signed into law by the Governor in 2025 by January 1, 2026 to avoid confusion as to which standards should be used by regulated parties and the market. The CI standards in WFRS should not be any different than what is published in Tables 1 and 2.

WAC 173-424-900 - Table 5 (ILUC). WSPA encourages Ecology to reassess all the ILUC values based on more recent data but not limit the use of the current ILUC values to specific regions. WSPA is looking forward to seeing new ILUC values from Ecology so that they can be incorporated in this rulemaking.

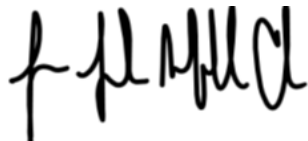
WAC 173-424-900 - Table 6 (Lookup CI). WSPA requests that Ecology clarify the rationale for the proposed removal of WAGAS002 (E10) and WAULSD002 (biodiesel blend) from Table 6, as it is WSPA's understanding that these Fuel Pathway Codes (FPCs) have been used for reporting in prior quarters. In addition, WSPA seeks an explanation of how these FPCs will be replaced, including the process for assigning new FPCs and the CI scores that will be associated with the replacements.

WAC 173-424-900 - Table 8 (Temporary CI). Renewable diesel, alternative jet fuel, renewable naphtha and renewable LPG should all have the same CI score for a given feedstock, as they are co-products of the same process and the GREET model assigns the same CI for all the products for a given feedstock. Therefore, Ecology should reset the CI score to 45 gCO₂e/MJ for all waste

oils, including distiller's corn oil, and 65 gCO₂e/MJ for plant oils for renewable diesel, alternative jet fuel, renewable naphtha and renewable LPG. These products should not have a different CI score for a given feedstock. Additionally, for biomethane-based fuels, WSPA recommends aligning the treatment of CI scores across LNG, CNG, and L-CNG forms. Specifically, Biomethane LNG should be treated consistently with Biomethane CNG, and "Landfill" should not be excluded from eligibility. Similarly, for Biomethane L-CNG fuel, it appears that the feedstock category "Digester" should be redlined to maintain consistency with other biomethane entries.

WSPA appreciates the opportunity to provide comments on this important proposed regulation. We encourage Ecology to reach out for any clarification regarding these comments. Please do not hesitate to contact me directly at (360) 594-1415 or via email at amachado@wspa.org.

Sincerely,



Attachments: Attachment A – WSPA Comment Letter December 13, 2024.
Attachment B – WSPA Comment Letter October 3, 2024.
Attachment C – WSPA Comment Letter June 7, 2024.
Attachment D – WSPA Comment Letter March 22, 2024.

Cc: Jessica Spiegel - WSPA



Antonio Machado

Senior Manager, Northwest Regulatory Affairs and Fuels

December 13, 2024

Sent via upload to: <https://ecology.commentinput.com/?id=7auJYTbfk>

Mr. Adam Saul
CFS Rule Lead
Washington State Department of Ecology
300 Desmond Drive SE
Lacey, WA 98503

Re: WSPA Comments on Draft 2024 Clean Fuel Standard Amendments

Dear Mr. Saul:

Western States Petroleum Association (WSPA) appreciates the opportunity to comment on the Washington State Department of Ecology (Ecology) 2024 Draft Clean Fuel Standard (CFS) Regulation Amendments. WSPA is a trade association that represents companies which provide diverse sources of transportation energy throughout the West, including Washington. This includes the transporting and marketing of petroleum, liquid fuels, natural gas, and other energy supplies.

General Comment

Corrections to Section References

Throughout the regulatory language, references are made to other sections of the document. WSPA requests that Ecology verifies and corrects as necessary the following section references:

Part 4 - The reference to § 173-424-400(11) does not appear to be valid.

Part 5 - The reference to § 173-424-530(1)(e)(iii) should be § 173-424-530(1)(a)(iii).

The reference to § 173-424-560(1)(a)(vi) should be § 173-424-560(1)(b)(vi).

The reference to § 173-424-560(1)(a)(vii) should be § 173-424-560(1)(b)(vii).

The reference to § 173-424-560(1)(c)(v) does not appear to be appropriate.

The reference to § 173-424-560(1)(c)(vi) does not appear valid.

Part 6 - The reference to §173-424-600(3)(ii) does not appear to be valid.

Specific Comments

§ 173-424-110(126) - "Renewable hydrocarbon diesel" or "renewable diesel". WSPA suggests that Ecology provides a broader definition of renewable diesel beyond limiting the definition to 40 CFR Part 79.

§ 173-424-110(162) - "Total obligated amount (TOA)". As the initial inventory in 2023 should not impact credits and deficits generation, WSPA believes that reference to the initial inventory in 2023 should be removed from the Total Obligated Amount (TOA) definition.

§ 173-424-110(163) - "Book-and-claim accounting". WSPA requests that Ecology confirms that a renewable fuel producer can lower its fuel pathway carbon intensity (CI) by purchasing Renewable Energy Certificates, even if the renewable electricity is not connected behind the meter at the renewable fuel facility.

§ 173-424-120(3) - Applicability. WSPA suggests that Ecology adds alternative marine fuel as defined in § 173-424-110(164) as an opt-in fuel.

§ 173-424-120(4)(d) - Applicability. WSPA believes that Ecology should not set arbitrary limits on renewable content for hydrogen or arbitrary date limits. Hydrogen, like other fuels, should be evaluated based on its CI and the CI standard in a given year. If the CI of hydrogen is below the CI standard, then the hydrogen should generate credits. If the CI of hydrogen is above the CI standard, then the hydrogen should generate deficits.

§ 173-424-130(2)(a)(ii) - Exemptions. While this subsection exempts vessels, the proposed § 173-424-110 (164) definition would allow fuels with credit generation. WSPA requests that Ecology clarifies the conditions in § 173-424-130 for not exempting vessels from the CFS.

§ 173-424-130(3)(b) - Exemptions. WSPA requests that Ecology corrects the regulatory language to specify that the fuel distributor to the end user is responsible for the accuracy of the submitted information for exempt fuel uses, and not necessarily the fuel importer or the fuel producer.

§ 173-424-400(1) - Recordkeeping. Note that the record retention requirement in the CFS is 7 years and not 10 years as cited in this section. WSPA requests that Ecology corrects this section regarding duration of record retention.

§ 173-424-420(6)(a)(ii) - Specific Reporting Requirements. Ecology should remove the requirement to report crude oil information (MCON reports) as not all petroleum gasoline and petroleum diesel fuel supplied in Washington originate from refineries located in Washington. Requiring MCON reports for refineries located in Washington-only does not provide representative information of all the crude oils that are processed to supply fuel in Washington. Therefore, this information is not useful, and the MCON reporting treats Washington State refineries unfairly compared to refineries located out of state and out of the country that supply fuel in Washington.

§ 173-424-420(6)(d) - Specific Reporting Requirements. The report in the Washington Fuels Reporting System (WFRS) is not done at the “tank” level nor at the “facility” level but statewide. Therefore, the regulatory language in this section should not refer to a “*tank*” or “*tanks*” or “*facility*” but rather the statewide inventory. Specific fuel pathway code inventory is not tracked by “*tank*” or “*facility*.” Furthermore, “*tank*” and “*facility*” are not defined in the CFS regulation.

§ 173-424-420(10) - Specific Reporting Requirements. WSPA requests that Ecology provides at least 10 business days to make corrections instead of only 2 business days after the correction request is approved, as reporting entity may not be available right away due to other duties, vacation, etc. Furthermore, the proposed regulatory language should allow the generation of additional credits or the removal of deficits if the correction adds credits or removes deficits.

§ 173-424-420(11)(a) - Specific Reporting Requirements. WSPA believes that fuels should not be treated differently after December 31, 2033. Ecology should not set arbitrary limits on fuels. The CI standards should remain drivers for credits and deficits generation before and after December 31, 2033.

§ 173-424-420(11)(b) - Specific Reporting Requirements. WSPA requests that Ecology reword this subsection to clearly state that hydrogen produced at a facility not physically connected to a renewable fuel facility can be book-and-claimed.

§ 173-424-430(4) - Annual Compliance Reports. WSPA requests that Ecology provides at least 10 business days to make corrections instead of only 2 business days after the correction request is approved, as reporting entity may not be available right away due to other duties, vacation, etc. Furthermore, the proposed regulatory language should allow the generation of additional credits or the removal of deficits if the correction adds credits or removes deficits.

§ 173-424-510(5)(c) - Credits and Deficits Basics. WSPA requests that the proposed regulatory language allows for the generation of credits if the reporting period has passed when making a report correction. Residential charging should not be the only exemption for credit generation after the reporting period has passed.

§ 173-424-560 - Generating and Calculating Capacity Credits for ZEV Fueling Infrastructure Pathways. Note that the equations in this section did not print legibly in the PDF file. WSPA requests that a “clean version” be reissued which prints legibly in PDF format.

§ 173-424-560(1)(d)(v) - Heavy-duty Hydrogen Refueling Infrastructure (HD-HRI) Pathways. WSPA requests that the references to CI score, renewable content and year restriction be removed from this section. Hydrogen should be evaluated on its CI score and generate credits if the CI score is below the CI standard and generate deficits if the CI score is above the CI standard.

§ 173-424-600(1)(a) - Carbon Intensities. WSPA believes that the proposed regulatory language should not restrict the indirect land use change (ILUC) to 10-year-old emission factor (AEZ-EF from December 2014), but rather allow newer ILUC that were derived from more recent studies.

§ 173-424-600(5)(b)(iii) - Primary Alternative Fuel Pathway Classifications. WSPA requests clarification as to whether Ecology will develop a CI Calculator for hydrogen and, if so, would hydrogen fuel pathways be classified as Tier 1 pathways.

§ 173-424-600(5)(b)(iv) - Primary Alternative Fuel Pathway Classifications. WSPA suggests, for consistency and clarity, that this subsection be revised to reflect the regulatory language from subsection (a)(iii) as follows: “Renewable *diesel, propane, naphtha, or alternative jet fuel produced from conventional feedstocks (plant oils, tallow, and related animal wastes and used cooking oil) using hydrotreatment processes.*”

§ 173-424-600(6)(g) - Specified Source Feedstocks. WSPA urges Ecology to avoid requiring additional attestation requirements, as specified source feedstocks are already subject to special data tracking and third-party verification requirements. WSPA suggests that this section be removed from the proposed regulatory language. If Ecology chooses to include additional attestation requirements for specified source feedstock, the following paragraphs need to be addressed:

“(i) The specified source feedstocks have not undergone additional processing, such as drying or cleanup, except as explicitly included by the fuel producer in their lifecycle analysis and pathway carbon intensity.”

The provisions in subsection (i) are too stringent. Water content should be left to a minimum before transporting feedstock to minimize GHG emissions associated with transportation, as it is not effective to transport feedstocks with high water content. WSPA requests that the language of this section be modified to allow reasonable drying and cleanup of feedstocks before they are transported to a renewable fuel production facility.

“(ii)(B) Deliveries of the specified source feedstock(s) consist entirely of what is documented on the feedstock transfer documents and are not mixed or altered with any materials that do not meet the definition of that specified source feedstock.”

The provisions of subsection (ii)(B) are also too stringent. Specified source feedstock should be allowed to be transported along and/or mixed with other renewable feedstocks, such as soybean oil or canola oil. The proposed regulatory language of this subsection should be updated to allow commingled feedstocks.

“(ii)(C) The specified source feedstocks were not intentionally produced, modified, or contaminated to meet the definition.”

The intent of the language in this subsection needs to be clarified as specified source feedstocks are produced as co-product of other operations. Thus, the wording of subsection (ii)(C) could be interpreted that no specified source feedstock would ever qualify under the CFS.

§ 173-424-600(6)(g)(iii)(E) - Specified Source Feedstocks. WSPA requests that the proposed regulatory language in the attestation be modified to allow for drying and cleanup of the feedstock and transportation with other renewable feedstocks, including soybean oil and canola oil.

§ 173-424-600(7) - Book-and-Claim Accounting. WSPA suggests adding the following to this subsection for consistency with the evolving regulatory approach in other states: *“...to produce electricity for linear generation, EV charging...Indirect accounting may be applied to RNG used as a transportation fuel to produce electricity from linear generators or using a fuel cell for EV charging, to produce hydrogen...”*

Ecology should clarify that Book-and-Claim Accounting is also applicable to hydrogen used in the production of renewable fuels. For instance, Book-and-Claim could be applied to credit a low CI hydrogen facility not physically connected to a renewable fuel facility. Additional clarity is requested whether Book-and-Claim of hydrogen is allowed for all renewable fuel or only alternative jet fuel or alternative marine fuel as suggested by § 173-424-420(11). Further, Ecology should clarify how Book-and-Claim hydrogen should be applied to a specific pathway within the State, whereby the facility produces renewable fuels for other States that do not recognize Book-and-Claim accounting. For example, can the lower carbon intensity hydrogen be applied preferentially to hydrogen use required for the renewable fuel placed in Washington?

§ 173-424-600(7)(a) and (b)(ii) - Book-and-Claim Accounting. WSPA requests that the reference to “feedstock” for RNG used to produce hydrogen be removed from the proposed regulatory language. As the molecules of RNG are not traced under book-and-claim accounting; there is no way to identify that the RNG is a feedstock rather than a heat source for hydrogen production. This subsection should allow book-and-claim for RNG used for the production of hydrogen and renewable fuels regardless of whether the RNG is used as a feedstock or a heat source (as the molecules are not tracked to a particular processing unit or section of a processing unit).

If Ecology intends to allow book-and-claim accounting for biomethane as a production input to some forms of electricity production and fuel production, WSPA suggests modification of the regulatory language in subsections (7)(a) and (b)(ii) to clarify how matching and deliverability requirements extend to those uses. For example, would the three-quarter time-span referred to in subsection (7)(a) be from the quarter pipeline injection occurs to the quarter the input is claimed in a CI calculation as an electricity/fuel production input? For the deliverability requirements in subsection (7)(b)(ii), WSPA further suggests that the reference be corrected from “fuel dispensing facility” to “fuel production facility”.

§ 173-424-600(7)(b), (b)(ii), and (b)(iii) - Book-and-Claim Accounting. WSPA recommends that Ecology reassess the deliverability requirement in both subsections as these dates may limit the number of RNG facilities that can participate in the program (i.e., deliverability requirements stricter than other states). WSPA also suggests adding the following to this subsection for consistency with the evolving regulatory approach in other states: *“...for the production of electricity using a fuel cell or linear generation for EV charging, or biomethane ...”*

§ 173-424-610(6)(e) - Applicants Seeking a Provisional Carbon Intensity. Fuel pathway applicants should not have to resubmit an application to qualify for a lower CI score if the operational CI is lower than the provisional CI. Ecology should certify the application with the operational CI plus a safety of margin as selected by the applicant.

§ 173-424-610(9)(l)(iii) - Review and Approval Process to Use Carbon Intensities. The proposed penalty of four times the difference between the verified CI and the operational CI is excessive and not justified. WSPA suggests that Ecology simply adjusts the credits based on the operational CI score, with no multiplier.

§ 173-424-610(9)(l)(v) - Review and Approval Process to Use Carbon Intensities. WSPA requests clarification from Ecology as to how a CI exceedance would occur as a result of a calculator update, given that Ecology is not planning to update WA-GREET.

§ 173-424-610(9)(l)(vi) - Review and Approval Process to Use Carbon Intensities. The fuel pathway holder should not be considered out of compliance (Ecology should not take enforcement action) in the event that the verified CI is higher than the operational CI. This subsection should simply indicate that the credits should be adjusted accordingly and reset the CI to the verified CI, plus a margin of safety, with no penalty.

§ 173-424-610(9)(m) - Review and Approval Process to Use Carbon Intensities. The proposed regulatory language should not exclude prior reporting periods when trueing up credits. Excluding prior reporting periods from true up credits would defeat the purpose of this section.

§ 173-424-610(9)(m)(i) - Review and Approval Process to Use Carbon Intensities. While WSPA supports the addition of a true up, we suggest that credits are deposited after August 31 but before October 31.

§ 173-424-610(15) – For Non-Provisional pathways. A fuel pathway holder should not be found out of compliance if the operational CI is found to be greater than the certified CI. Ecology should simply adjust the credits accordingly and reset the certified CI to the operational CI value plus a margin of safety.

§ 173-424-610(16)(c)(i) and (c)(ii) - Avoided Methane Crediting. The proposed regulatory language penalizes those projects that were early adopters and broke ground before 2009. It also imposes a more limited crediting period than California. WSPA recommends that these subsections align with California's program that allows for two 10-year crediting periods for projects developed prior to 2030.

§ 173-424-630(3) - Determining the Carbon Intensity of Electricity. WSPA recommends that the proposed regulatory language specify the basis for the emission factor of 0.437 metric tons/MWh.

§ 173-424-700(3) - Credit and Deficit Modifications. WSPA recommends that instead of establishing a threshold with an absolute number of credits to determine penalties, this subsection should use a percentage of the credits or deficits generated. For example, if less than 5% of the credits or deficits generated need adjustments, then the credits or deficits will be adjusted in the reporting entity account with no penalties. If the "offense" represents a high percentage of the credits or deficits generated (for example greater than 25%), then Ecology could start an investigation to determine if penalties are applicable.

In addition, WSPA requests that § 173-424-700(3)(a)(iii) and (3)(b)(ii) be removed from the proposed regulatory language, assigning 4 times the deficits or removing 4 times the credits is not

justified, if a correction needs to be made due to fuel CI reporting adjustments, due to operations variability. Rather, a true up should be performed for the credits/deficits without penalty.

§ 173-424-710(5) - Public Disclosure. WSPA recommends that Ecology continue publishing the cost per gallon of fuel of the CFS, as the public should remain informed of the cost of the program.

§ 173-424-810(1) - General Requirements for Verification. As the CFS Regulation Amendments will likely not be adopted until sometime in 2025, the requirement for a fuel pathway to be verified should be for reporting year 2026 (rather than 2025). In addition, the first annual verification statement should be 2028 (rather than 2027), with the verification of fuel pathway data covering years 2026 and 2027. This will also provide more time for Ecology to qualify third-party verifiers under the CFS Regulation Amendments.

§ 173-424-810(4)(c)(ii) - General Requirements for Verification. WSPA requests that this subsection be deleted from the regulatory language as “*total reported emissions*” applies to a greenhouse gas (GHG) reporting program but does not apply to the CFS.

§ 173-424-820(2)(b)(iv) - Requirements for Verification of CFS Reports and Validation of Fuel Pathway Applications. For California and Oregon fuel pathway recertifications, this subsection should include language allowing for acceptance of California or Oregon Simplified CI Calculators (CA-GREET or OR-GREET models).

§ 173-424-820(4) - Verification of Crude Oil Quarterly and Annual Volumes Reports. WSPA requests that this subsection be removed as Ecology should not require a verification of crude oil reports. Because not all fuels supplied in Washington originate from Washington state refineries, the crude oils processed by Washington state refineries do not represent all the crude oils used to supply fuel in Washington. The verification of crude oils processed by Washington state refineries would not cover all the crude oils processed for fuel deliveries in Washington and, therefore, put an unnecessary burden on Washington state refineries and would add no value to the CFS.

§ 173-424-830(2)(c) - Requirements for Verification Services. It is WSPA’s position that site visits should not be required at reporting entities offices. Virtual meetings with tools such as Zoom, Webex, Microsoft Teams, and others should be acceptable. Only a site visit for the initial fuel pathway validation should be required in this subsection at the producing facility.

§ 173-424-830(2)(k) - Crude Oil Quarterly and Annual Volumes Reports. WSPA requests that this subsection be removed as Ecology should not require a verification of crude oil reports. Because not all fuels supplied in Washington originate from Washington state refineries, the crude oils processed by Washington state refineries do not represent all the crude oils used to supply fuel in Washington. The verification of crude oils processed by Washington state refineries would not cover all the crude oils processed for fuel deliveries in Washington and, therefore, put an unnecessary burden on Washington state refineries and would add no value to the CFS.

§ 173-424-850 - Conflict of Interest Requirements. WSPA requests that this section be revised to clearly state that using the same verification body for GHG verification in Washington state, GHG and/or LCFS verification in Oregon and/or California, GHG and/or LCFS verification in Canada (federal and provinces) and USEPA RFS RIN verification does not constitute a conflict of interest.

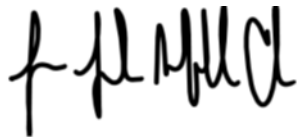
§ 173-424-900 - Table 6. WSPA requests the rationale as to why WAGAS002 and WAULSD002 were removed from Table 6 (i.e., no finished E10 gasoline or blended biodiesel that are supplied to Washington by truck from other states?).

§ 173-424-900 - Table 7. WSPA requests the rationale as to why substitute pathway code WAGAS0116 for E10 was removed from Table 7 (i.e., no E10 that gets exported from Washington?). Further, WSPA requests feedback from Ecology as to whether Ecology is considering the creation of a new substitute pathway code for B5 or other biodiesel or renewable diesel percentage blended fuel.

§ 173-424-900 - Table 8. WSPA recommends that this subsection set temporary fuel CI scores for renewable diesel, alternative jet fuel, renewable naphtha, renewable gasoline, and renewable propane to 45 gCO₂e/MJ and 65 gCO₂e/MJ for waste oils and vegetable oils, respectively. There is no reason for the regulatory language to arbitrarily vary these CI scores, as all co-products have the same CI score for a given feedstock. Biodiesel, renewable diesel, alternative jet fuel, renewable naphtha, renewable gasoline, and renewable propane from distiller's corn oil should be set at 45 gCO₂e/MJ as distiller's corn oil is a by-product of ethanol manufacturing.

WSPA appreciates the opportunity to provide comments on this important proposed regulation. We encourage Ecology to reach out for any clarification regarding these comments. Please do not hesitate to contact me directly at (360) 594-1415 or via email at amachado@wspa.org.

Sincerely,



Cc: Jessica Spiegel - WSPA



Antonio Machado

Senior Manager, Northwest Regulatory Affairs and Fuels

October 3, 2024

Sent via upload to: <https://ecology.commentinput.com/?id=R5Ysf3Ud>

Mr. Adam Saul
CFS Rule Lead
Washington State Department of Ecology
300 Desmond Drive SE
Lacey, WA 98503

Re: WSPA Comments on Draft 2024 Clean Fuel Standard Amendments

Dear Mr. Saul,

Western States Petroleum Association (WSPA) appreciates the opportunity to comment on the Washington State Department of Ecology (Ecology) 2024 Draft Clean Fuel Standard (CFS) Regulation Amendments. WSPA is a trade association that represents companies which provide diverse sources of transportation energy throughout the West, including Washington. This includes the transporting and marketing of petroleum, liquid fuels, natural gas, and other energy supplies.

General Comments

Unmetered Residential EV Charging

WSPA supports Ecology's efforts to implement accurate checks and balances for credit estimation and verification to meet the goals of the verification program and ensure the validity and proper accounting of all credits. Accordingly, WSPA recommends against exempting non-metered residential EV charging from third-party verification, ensuring that all aspects of credit generation undergo the same rigorous validation and verification process. This verification should encompass a review of EV charging efficiencies, average miles traveled, the distribution of EVs in Washington, comparisons with actual on-board EV data, residential surveys, and utility meter reconciliations.

Sustainable Aviation Fuel

Initially, the purpose of this rulemaking was to incentivize the production of sustainable aviation fuel. However, the current proposed language does not appear to address this objective. WSPA requests that Ecology provide stakeholders with future plans to incentivize sustainable aviation fuel or alternative jet fuel in this rulemaking.

Renewable Natural Gas (RNG) – Avoided Methane and Deliverability

Limiting avoided methane credits for projects established before 2023 penalizes entities that invested early in anticipation of the Washington CFS's adoption. This restriction could make it difficult for facilities to cover operational costs, potentially forcing them to discontinue operations and resulting in increased methane emissions to the atmosphere.

Regarding deliverability, WSPA recommends that Washington not adopt CARB's proposal to apply electricity deliverability standards to the natural gas system, as it overlooks key differences in how these energy systems operate. Unlike electricity, RNG can be stored and transported through the national pipeline network using an effective book-and-claim tracking system, which promotes RNG development across the U.S. without requiring direct physical delivery. Imposing CARB's

deliverability standards would add unnecessary administrative and cost burdens, potentially blocking imported RNG and penalizing early investors who anticipated Washington's CFS program.

Specific Comments

WAC 173-424-110 - Definitions

Renewable gasoline is not defined in WAC 173-424-110, despite being mentioned in WAC 173-424-120(2)(k). Ecology should include a definition for renewable gasoline in WAC 173-424-110 to ensure clarity and consistency.

WAC 173-424-420(10) & WAC 173-424-430(4) - Specific and Annual Reporting Requirements

Ecology should provide at least ten business days for making corrections after a correction request is approved, instead of the current 2 business days. This extension would accommodate reporting entities who may be unavailable due to other duties, vacation, or other commitments.

WAC 173- 424-700(3) – Credit and Deficit Modifications

WSPA has several concerns regarding the credit or deficit modification provision proposed in WAC 173-424-700(3). In 2023, total credit generation was 1.946 million MT, while administrative credit adjustments accounted for a reduction of only 6,848 MT, or 0.35% of the total. Similarly, deficit generation in 2023 was approximately 905,000 MT, with administrative deficit adjustments amounting to 17,554 MT, or 2% of the total, most of which occurred during the first two quarters of the program. These administrative adjustments have decreased each quarter and were initially higher due to the program's implementation without a reporting-only period.

The thresholds established in the proposed table are extremely low relative to the size of typical fuel transactions. For instance, a transaction involving two railcars of renewable diesel with a carbon intensity of 20 gCO₂e/MJ equates to approximately 615 MT of credits, which significantly exceeds the highest penalty threshold, despite representing only a small portion of the total fuel volume transacted in Washington. We recommend that Ecology revise these thresholds upward to better align with the scale of common fuel transactions.

Additionally, we suggest that Ecology reassess whether a tiered penalty system based solely on the number of credits or deficits is appropriate, given the disproportionate impact on fuels transacted in larger quantities for similar types of errors.

In light of current trends in administrative credit and deficit adjustments, as well as the potential negative impacts of low credit thresholds and high penalty multipliers on regulated entities and the credit market, we recommend that Ecology remove the proposed credit and deficit modifications from the draft rule.

WAC 173- 424-700(3) – Penalties for Reporting Errors

Given the relatively low frequency of administrative credit adjustments in proportion to the market size and the observed trend of decreasing adjustments over time, the proposed penalty structure—which would multiply future credit adjustments by two to four times—may result in greater market disruption than it aims to prevent.

During rulemaking workshops, Ecology indicated that the primary purpose of the penalty structure

is to reduce reporting errors and mitigate subsequent credit market distortions. However, administrative credit adjustments currently constitute a very small portion of the total credits and deficits generated each quarter, especially given the program's maturity. To establish appropriate penalties, Ecology should consider using a percentage of the credits or deficits generated, rather than setting a threshold based on an absolute number of credits. For example, if adjustments are required for less than 1% of the credits or deficits generated, these adjustments could be made to the reporting entity's account without penalties. Conversely, if the discrepancy represents a significant portion of the credits or deficits generated, such as more than 25%, Ecology could initiate an investigation to determine whether penalties are warranted.

WSPA believes that multiplying credit and deficit adjustments by two to four times is likely to have an excessively punitive effect on reporting entities and could exacerbate market disruptions. The high multipliers proposed may offset or even exceed any reduction in the total quantity of credit/deficit adjustments that might be achieved by decreasing the number of occurrences. Moreover, given the low credit thresholds proposed, entities could face a 4:1 penalty for a first offense involving only one transaction error, which contradicts Ecology's stated intent to avoid harsh penalties for minor mistakes.

We recommend reevaluating the necessity of this penalty structure, as it may not be required to enhance reporting accuracy and could undermine Ecology's objective of preventing market distortion while avoiding excessive penalties. While we maintain that the credit and deficit modification proposal is unnecessary for the program, should Ecology decide to proceed, we offer several suggested modifications for consideration. Instead of establishing a penalty threshold based on an absolute number of credits, Ecology could use a percentage of the credits or deficits generated.

WAC 173- 424-700(3) – Verified Exceedances/True-ups

During the September 9, 2024 Workshop, Ecology staff expressed their intention to align with the California Air Resources Board's (CARB) current proposal to issue four deficits for every credit generated due to a verified CI exceedance. This penalty appears disproportionate to the severity of the violation.

Furthermore, unlike the proposed rules in California and Oregon, the Washington CFS does not provide an opportunity for pathway holders to receive additional credits through a true-up process when their verified CI is lower than their certified CI. Implementing such a mechanism in Washington would further incentivize fuel pathway holders to adopt a more conservative approach when selecting a margin of safety for their certified CI, potentially reducing occurrences of verified CI exceedances.

We urge Ecology to consider reducing the severity of the penalty for verified CI exceedances and to explore the inclusion of a credit true-up mechanism for fuel pathway holders. This approach would promote greater accuracy in CI reporting and better align Washington's regulations with those of neighboring states.

WAC 173-424-710 (5) – Public Disclosure

Ecology should retain subsection WAC 173-424-710 (5) despite its presence in the statute. Numerous sections within WAC 173-424, including the CI standards, are also covered by statute. WSPA recommends that Ecology maintain this subsection to ensure the clarity and comprehensiveness of the regulation.

WAC 173-424-810 (1) – Validation and Verification

Given that this CFS amended regulation is unlikely to be adopted before the end of 2024, Ecology should not mandate verification of 2025 data for a fuel pathway. Instead, the first annual verification statement should be deferred to 2028, encompassing the verification of fuel pathway data for 2026 and 2027. This adjustment will also allow Ecology additional time to qualify third-party verifiers under the CFS.

WAC 173-424-820(2)(b)(iv) – Recertification of Fuel Pathways

For the recertification of fuel pathways, Ecology should accept the California or Oregon Simplified CI Calculators (CA-GREET or OR-GREET models) used in California and Oregon.

WAC 173-424-820(4) & WAC 173-424-830(2)(k) – Crude Oil

Ecology should remove these sections, as requiring verification of crude oil reports is unnecessary. Not all fuels supplied in Washington originate from in-state refineries, and the crude oil processed by these refineries does not account for all the crude oils used to supply fuel in Washington. Verifying the crude oils processed by Washington state refineries would therefore place an undue burden on these refineries without adding value to the CFS.

WAC 173-424-830(2)(c) – Site Visits

Site visits to reporting entities' offices should not be mandatory. Virtual meetings using platforms such as Zoom, Webex, Microsoft Teams, and similar tools should be considered sufficient. A site visit should only be required at the producing facility for the initial fuel pathway validation.

WAC 173-424-850 – Conflict of Interest

Ecology should explicitly state in the regulation that utilizing the same verification body for GHG verification in Washington state, as well as for GHG and/or LCFS verification in Oregon, California, Canada (both federal and provincial), and for EPA RFS RIN verification, does not constitute a conflict of interest.

WAC 173-424-900 – Table 7

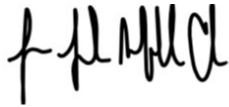
During the September 9, 2024 Workshop, Ecology stated that the removal of the substitute pathway code RNWD0116 was unintentional and would be corrected in the next version of the rule. WSPA requests that Ecology correct this error and reinstate the renewable diesel substitute pathway in Table 7.

WAC 173-424-900 – Table 8

Ecology should set the temporary fuel CI scores for biodiesel, renewable diesel, alternative jet fuel, renewable naphtha, renewable gasoline, and renewable propane at 45 and 65 gCO₂e/MJ. There is no justification for Ecology to arbitrarily vary these CI scores. Specifically, fuels produced from distiller's corn oil, a by-product of ethanol manufacturing, should be assigned a CI score of 45 gCO₂e/MJ.

WSPA appreciates the opportunity to provide comments on this important proposed regulation. We encourage Ecology to reach out for any clarification regarding these comments. Please do not hesitate to contact me directly at (360) 594-1415 or via email at amachado@wspa.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Spiegel'.

Cc: Jessica Spiegel - WSPA



Antonio Machado

Senior Manager, Northwest Regulatory Affairs and Fuels

June 7, 2024

Sent via upload to: <https://ecology.commentinput.com/?id=7auJYTbfk>

Mr. Adam Saul
CFS Rule Lead
Washington State Department of Ecology
300 Desmond Drive SE
Lacey, WA 98503

Re: WSPA Comments on May 2024 Clean Fuel Standard Rulemaking Workshops

Dear Mr. Saul,

Western States Petroleum Association (WSPA) appreciates the opportunity to comment on the Washington State Department of Ecology (Ecology) Clean Fuel Standard (CFS) Rulemaking Workshops, held on May 2, 2024 and May 8, 2024 (identical Ecology staff presentations).¹ WSPA is a trade association that represents companies which provide diverse sources of transportation energy throughout the West, including Washington. This includes the transporting and marketing of petroleum, liquid fuels, natural gas, and other energy supplies.

Presented below are WSPA's general and specific comments for the CFS Rulemaking Informal Comment Period #2, based on the Ecology staff slide presentation during the CFS Workshops. Each specific comment is referenced by the slide number from the slide presentation. Attached to this letter and incorporated by reference is the WSPA March 22, 2024 comment letter for the initial CFS Rulemaking Informal Comment Period.²

General Comments

Rulemaking Process

WSPA appreciates Ecology's focus on a process that allows for the review of draft rule language with stakeholders in public workshops. Stakeholder feedback on regulatory language is critical to avoiding unintended consequences or challenges in executing compliance. While the rulemaking timeline is aggressive, WSPA members are committed to providing timely constructive input to assist with the process

Fuel Pathway Applications Processing

WSPA is concerned that fuel pathway applications are not processed in a timely manner by Ecology. We suggest that Ecology's focus for this rulemaking is on streamlining fuel pathway applications. Fuel pathways should be reviewed by Ecology in no more than 30 days.

During the February 2024 workshops, Ecology proposed to move up the date from October 2024 to process Tier 2 pathways for SAF (Slide 15 of the February Ecology presentation). WSPA encouraged Ecology to process all Tier 2 fuel pathway applications immediately, without any further

¹ <chrome-extension://efaidnbmninnibpcapjpcglclefindmkaj/https://ecology.wa.gov/getattachment/cfeb9fc5-7100-42d3-b80d-db6286ecd487/CFS-Rulemaking-May-Presentation.pdf>.

² Western States Petroleum Association. "WSPA Comments on February 2024 Clean Fuel Standard Rulemaking Workshops", March 22, 2024.

delays. (See below prior WSPA comment letter for reference). Ecology should provide an update on when they are planning to review Tier 2 pathways.

WSPA also recommends that Ecology publishes a monthly progress report on fuel pathway application processing (or other means of timely communication of application processing progress), showing how many pathway applications are in the queue and how many pathways are being reviewed each month.

GREET Model

WSPA requests that fuel pathways developed under the CA-GREET 3.0, CA-GREET 4.0, OR-GREET 3.0 and OR-GREET 4.0 are accepted and recertified in Washington without having to use the WA-GREET model. We believe that it is not to best use of Ecology's resources to essentially duplicate work that has already been completed by authorizing agencies in other states. Fuel pathways that have already been certified in California or Oregon should undergo a fast-track review by Ecology and should be certified within 15 days.

Specific Comments

Recap; In-Scope/Out-of-Scope (Slide 5)

Slide 5 indicates that updates to WA-GREET are out of scope of this rulemaking. In addition, it is our understanding that Ecology will not be updating the WA-GREET model at any time during this rulemaking process. Given that the California and Oregon programs are currently considering updates to CA-GREET and OR-GREET, respectively, we request that Ecology acknowledge in the proposed rule language that applicants would continue to be able to use CA-GREET and OR-GREET certified pathways.

SAF Background (Slide 10)

It is unclear if tax credits overseen by the Department of Revenue and verified by Ecology will be retroactively applied to the first 20 million gallons of SAF produced or will the tax credits only be available starting with the 20,000,001st gallon. WSPA requests further clarity on this item.

SAF Updates (Slide 11)

WSPA supports the inclusion of SAF as an opt-in fuel. It is essential that consistent CI methodologies between the CFS and tax credit programs are used to avoid undue burden on both staff and regulated parties.

WSPA also requests Ecology to confirm that if an alternative jet fuel has a CI of 95 gCO₂e/MJ (as an example), then it would generate CFS credits in 2024 since the Table 2 standard is 99.11 gCO₂e/MJ, which is greater than 95.

SAF and Hydrogen (Slide 12)

WSPA believes that Book-and-Claim for low CI electricity, low CI hydrogen or RNG/biomethane should be allowed for all renewable fuel facilities and applicable to all renewable fuels, including alternative jet fuel, renewable diesel, renewable naphtha and ethanol, not simply to alternative jet fuel. Furthermore, some renewable fuel facilities may be producing alternative jet fuel along with other co-products, such as renewable naphtha and renewable diesel, so the Book-and-Claim option should be applied to the entire renewable facility, not narrowly to a specific fuel.

Sustainable Aviation Fuel (Slide 13)

WSPA agrees with Ecology's determination that it is statutorily prevented from adding jet fuel used for intrastate flights as a regulated fuel, in accordance with RCW 70A.535.040(1)(b), which exempts fuels used for the propulsion of all aircraft from the CFS.

Third- Party Verification Background (Slides 15)

WSPA requests that Ecology strives to ensure that a third-party verification program will not slow down processing of fuel pathway applications. Accordingly, Ecology should recertify fuel pathways that have been certified in California and/or Oregon without having to go through another third-party validation. If Ecology does continue with an annual 3rd party verification, it is essential that Ecology make clear when the verification process would start pursuant to this rulemaking. During Ecology's May 2nd Workshop Presentation, a stakeholder asked if 2023-2025 transactions would be subject to 3rd party verification. Ecology staff were unable at that time to confirm if those years would need to be verified. If 3rd party verification is expected to start in 2027, we request that Ecology stipulates that the verification affects transactions from 2026 and is not retroactive to 2023. In other words, the verification is an annual action but just looking at the prior year only.

As we noted in our March 22, 2024 comment letter, MCON (crude oil) reports should be eliminated. However, if Ecology maintains a requirement to report MCON, there should be no third-party verification on MCON reports. Since not all fuel consumed in Washington is supplied by refineries located in Washington, and the MCON reports are only limited to Washington refineries, there is limited value in these MCON reports, as they are not representative of all the crude oils processed into products for Washington consumption.

Third- Party Verification Basics (Slide 16)

WSPA believes that nonmetered residential EV charging credits should NOT be exempt from third-party verification. Verification of residential EV credits should include the review of EV charging efficiencies, average miles traveled, distribution of EVs in Washington, comparison with actual EV on board information, residential surveys, and utility meter reconciliations.

For fuel pathways, WSPA agrees with Ecology that no additional verification is required for a fuel pathway being verified under the California LCFS regulation and/or the Oregon CFP regulation.

Third-Party Verification – Accreditation and Rotation Requirements (Slide 18)

WSPA requests that Ecology clearly spells out in its regulation that the same third-party verifier and verification body can be hired by a company to verify GHG and LCFS reports in California, Oregon and Washington, and that situation does not constitute a conflict of interest.

Third-Party Verification Proposed Timeline (Slide 19)

WSPA requests that Ecology consider flexibility related to site visits. Annual in-person verification of fuel transaction reporting is unnecessary, given that the data and records being reviewed are electronic.

We also recommend that verification procedures be clear to ensure agreement between Ecology, regulated parties, and verifiers. Vague regulatory language and procedures that are open to interpretation have led to confusion and delays under other programs.

Regarding verifier rotation, WSPA suggests that Ecology consider whether this rotation (while aligning with other programs) is necessary. Verifiers, particularly CPA firms, have strict procedures to avoid conflicts of interest. Forced rotation adds cost and inefficiency to the process to address a risk for which there are sufficient existing controls in place.

Book-and-Claim Background (Slide 21)

Book-and-Claim accounting exists to ensure an efficient market and avoid added costs or even added transportation emissions. WSPA is concerned that overly-restrictive deliverability requirements defeat the purpose of book-and-claim accounting. We request that Ecology provide additional detail on proposed Book-and-Claim requirements, particularly components such as additionality and temporal matching, in future workshops.

Book-and-Claim - Electricity (Slide 22)

WSPA believes that if Ecology allows Book-and-Claim for electricity, as a transportation fuel, it should also be allowed for electricity used in a renewable fuel facility and in a petroleum refinery.

If a renewable fuel facility or a petroleum refinery is located in a state other than Washington, Book-and-Claim for electricity should also be allowed. Under the California LCFS, the generating facility should have been built after January 1, 2011 (inception of the LCFS program). Under the Oregon CFP, the generating facility should have been built after January 1, 2016 (inception of the CFP).

Ecology should develop a mechanism to generate CFS credits when a petroleum refinery is procuring low CI electricity by Book-and-Claim, based on grid electricity displacement, similarly to the provisions of the California LCFS Refinery Investment Credit Program (California LCFS regulation section 95489 (e)).

Book-and-Claim - Biomethane (Slide 23)

In concert with the comment above, if Ecology allows Book-and-Claim of biomethane/RNG, as a transportation fuel, the Book-and-Claim option should also be available to a biomethane used in renewable fuel facility and a petroleum refinery. WSPA suggests that Ecology develop a mechanism to generate CFS credits when a petroleum refinery is procuring biomethane/RNG by Book-and-Claim, based on fossil natural gas displacement, whether the biomethane/RNG is used as a fuel gas for any refinery units or feed gas for a hydrogen plant.

Reporting Liquid Fuels (Slide 30)

WSPA supports the mass balance accounting for fuels in commingled storage. Since a tank can receive fuel for various carbon intensities/fuel pathway codes (FPC), the fuel should be reported based on the corresponding FPCs and associated volumes.

We do, however, encourage Ecology to implement this in a manner that does not narrowly limit the definition of commingled storage, especially once a liquid fuel has been imported into the state. To this end, WSPA appreciates that Ecology has scheduled a listening session on June 12th on this topic and looks forward to engaging in this conversation.

Certified CI vs Operational CI (Slide 31)

WSPA supports a CI adjustment based on the annual reported values. However, there should be no further penalties if the CI in the annual report is higher (or lower) than the certified CI.

As Ecology is considering CARB's proposal for a "*Pathway Holder Deficit Obligation*", WSPA offers the following suggestions, consistent with comments submitted to CARB on this topic:

- Ecology should lessen deficit obligations for pathway holders that exceed their CI in a 24-month period. Under the proposed CARB amendments, pathway holders would incur a deficit four times the amount of the annual excess CI generated, and have excess credits invalidated, which effectively creates a penalty of five times the amount of the annual excess CI generated. This penalty is disproportionate and will have an outsized impact on pathway holders, particularly since any true up benefit in a CI is provided to the importer, not the pathway holder.
- Ecology should lessen the severity of this obligation providing true up benefits to the pathway holder. Imposing deficit obligations on pathway holders who do not produce fuel in the State, import fuel into the State, or sell fuel into the State, may unduly burden interstate commerce, by requiring out-of-State pathway holders to suddenly participate in the credit/deficit market, which creates significant new obligations compared to being a pathway holder participant.

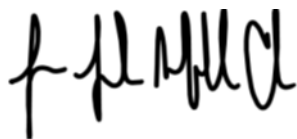
Other Refinements (Slide 33)

WSPA requests that the following items (all noted in our comments above) be incorporated in the amended CFS:

- A deadline for Ecology to review fuel pathway application within 30 days and previously certified fuel pathway in California and Oregon within 15 days.
- Ecology should accept pathways submitted with CA-GREET 3.0, CA-GREET 4.0, OR-GREET 3.0 and OR-GREET 4.0 models, with no requirement to use WA-GREET.
- Removal of MCON reports requirements. However, if Ecology maintains the MCON reporting requirement, there should be no third-party verification on MCON reports.

WSPA appreciates the opportunity to provide comments on this important proposed regulation. We encourage Ecology to reach out to WSPA for any clarification on these comments. Please do not hesitate to contact me directly at (360) 594-1415 or via email at amachado@wspa.org.

Sincerely,



Cc: Jessica Spiegel - WSPA

Attachment



Sophia Steele

Senior Manager, Northwest Region

March 22, 2024

Sent via upload to: <https://aq.ecology.commentinput.com?id=BsWVfdFP>

Mr. Adam Saul
CFS Rule Lead
Washington State Department of Ecology
300 Desmond Drive SE
Lacey, WA 98503

Re: WSPA Comments on February 2024 Clean Fuel Standard Rulemaking Workshops

Dear Mr. Saul,

Western States Petroleum Association (WSPA) appreciates the opportunity to comment on the Washington State Department of Ecology (Ecology) Clean Fuel Standard (CFS) Rulemaking Workshops, held on February 22, 2024 and February 28, 2024 (identical Ecology staff presentations). WSPA is a trade association that represents companies that provide diverse sources of transportation energy throughout the West, including Washington. This includes the transporting and marketing of petroleum, petroleum products, natural gas, and other energy supplies.

Presented below are WSPA's initial comments on this early phase of rulemaking, based on the Ecology staff slide presentation during the CFS Workshops. The slide number from the side presentation references each WSPA comment.

Sustainable Aviation Fuel (Slide 15)

WSPA supports the elimination of all delays in fuel pathway applications rather than just allowing sustainable aviation fuel (SAF) pathway applications sooner. Specifically, we suggest the removal of the October 1, 2024 date from the CFS language and accept any Tier 2 fuel pathway applications starting immediately. As SAF may be produced along with other renewable fuels such as renewable naphtha and renewable diesel at a given facility, opportunities to enhance renewable fuel availability would be undermined by limiting Tier 2 pathway applications to simply SAF.

Ecology noted in Slide 15 that staff intends *"to explore ways of further incentivizing production of low carbon intensity SAF."* WSPA would be interested in the results of this Ecology effort and suggests that the exploratory scope be increased to identify further incentives for other low carbon intensity renewable fuels as well.

Third- Party Verification Program (Slides 16)

Based on experience from other jurisdictions, WSPA suggests that Ecology consider the following elements in establishing a third-party verification program:

- Allow certification of fuel pathways that were validated under the California LCFS program or the Oregon CFP without requiring a third-party validation under the Washington CFS.
- All CFS credit generation must be verified, including electricity pathways. Furthermore, CFS credits allocated to electric utilities for residential EV charging should also be verified by a third-party.
- Have no third-party verification requirement on MCON reports (crude oil reports), as not all fuels consumed in Washington are produced by Washington-based refineries.

- Ensure that the third-party validation process does not slow down the review of fuel pathway applications by Ecology (but rather serves to speed up the application approval process).

General Rulemaking Process Questions (Slide 26)

In response to Ecology staff's inquiry on "*hopes and concerns*" for the rulemaking along with "*barriers*" to this rulemaking, WSPA provides following feedback:

- **Fuel Pathways** - WSPA believes that Ecology should review all fuel pathway applications within 30 days. If no response is provided by Ecology within 30 days, then the pathway applications should be certified or deemed complete (and moved to third-party verifier for validation if such a program is in place. Further, WSPA recommends that Ecology certify fuel pathways established under the CA-GREET model or the OR-GREET model along with the WA-GREET model pathways (which would eliminate the redundant step of re-certifying pathways that have already been certified). It is also noteworthy that the California and Oregon programs are currently considering updates to CA-GREET and OR-GREET, respectively. If Ecology elects not to likewise update WA-GREET, Ecology should ensure that applicants would continue to be able to use CA-GREET and OR-GREET certified pathways.
- **Refinery Investment Credit Program and Refinery Renewable Hydrogen Program** - Ecology should expand the CFS to allow CFS crediting under a "refinery investment credit program" for refineries that reduce fossil energy usage and CFS crediting for the production renewable hydrogen for use in refinery applications.
- **MCON Report (crude oil reports)** - Ecology should eliminate this requirement to report crude oil processed at Washington refineries (MCON reports) as a sizable portion of the fuels supplied in Washington originate from refineries that are located outside Washington. If Ecology decides to maintain MCON reporting:
 - Ecology should no longer require MCON reporting on a quarterly basis, but only require MCON reporting on an annual basis.
 - As stated in the Side 16 comment above, no third-party verification should be applicable to the MCON reports.
- **2023 Opening Inventories** - Ecology should clarify how the 2023 opening inventories were managed in the CFS and whether the inventories created deficits or credits or whether the opening inventories were not obligated. If the opening inventories were obligated, WSPA is requesting that Ecology publish, on an aggregate basis, the number of credits and deficits that were generated by the opening inventories.

WSPA appreciates the opportunity to provide comments on this important proposed regulation. If you have any questions, please contact me at (425) 890-9723 or via email at ssteele@wspa.org.

Sincerely,



Cc: Jessica Spiegel - WSPA